

ORIGINAL

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

OCT 29 2003

By: *C. H. Thomas*
Deputy Clerk

AMERICAN BANKERS LIFE
ASSURANCE COMPANY OF
FLORIDA,

Plaintiff,

v.

WASHINGTON MUTUAL HOME
LOANS, INC., DENISE TALSMAN;
FREDERICK D. BURKEY; and
THE BURKEY LAW FIRM, P.C.,

Defendants.

CIVIL ACTION
FILE NO.

1:03-CV-3275

CC

COMPLAINT FOR INTERPLEADER

COMES NOW, AMERICAN BANKERS LIFE ASSURANCE COMPANY
OF FLORIDA, Plaintiff in the above-styled action, and shows this Court as
follows:

JURISDICTION AND VENUE

1.

Plaintiff brings the instant interpleader action pursuant to 28 U.S.C. § 1335.
This Court has original jurisdiction over the instant action pursuant to 28 U.S.C. §
1335(a), as the subject of this action is a policy of insurance with a value greater

FORMS RECEIVED
Consent to US Mag.
Practice Instructions
Title VII NTC

Cy

than \$500.

2.

Plaintiff AMERICAN BANKERS LIFE ASSURANCE COMPANY OF FLORIDA (hereinafter “American Bankers”) is incorporated under the laws of the State of Florida, and with its principal place of business in Florida.

3.

Defendant WASHINGTON MUTUAL HOME LOANS, INC., (hereinafter “Washington Mutual”) is incorporated under the laws of the State of Ohio, and its principal place of business is in the State of Washington. Service of process may be obtained on this Defendant pursuant to 28 U.S.C. § 2361, and venue is proper pursuant to 28 U.S.C. § 1397. Defendant can be served through its registered agent, C.T. Corporation System, 1201 Peachtree Street, N.E., Atlanta, Fulton County, Georgia 30361.

4.

Defendant DENISE TALSMAN is a resident of Florida. Service of process may be obtained on this Defendant pursuant to 28 U.S.C. § 2361, and venue is proper pursuant to 28 U.S.C. § 1397. Defendant can be served at her residence at 600 S.E. 2nd Avenue, Deerfield Beach, Florida 33441.

5.

Defendant FREDERICK D. BURKEY is a resident of Georgia. Service of process may be obtained on this Defendant pursuant to 28 U.S.C. § 2361, and venue is proper pursuant to 28 U.S.C. § 1397. Defendant can be served at his residence at 235 Arbor Creek Way, Roswell, Fulton County, Georgia 30076.

6.

Defendant THE BURKEY LAW FIRM, P.C. is a professional corporation incorporated under the laws of the State of Georgia, and with its principal place of business in Georgia. Service of process may be obtained on this Defendant pursuant to 28 U.S.C. § 2361, and venue is proper pursuant to 28 U.S.C. § 1397. Defendant can be served through its registered agent, Frederick D. Burkey, 402 Abbey Court, Alpharetta, Georgia 30004.

7.

Diversity jurisdiction exists in this case for purposes of 28 U.S.C. § 1335, in that at least two of the Defendants/Claimants are diverse from each other.

FACTUAL ALLEGATIONS

8.

On or about September 1, 1999, American Bankers issued a policy of life

insurance (Policy Number 5301725650, hereinafter “the policy”) to Leroy W. Talsma, in connection with a mortgage granted by Leroy W. Talsma and Denise Talsma to Defendant Washington Mutual. A specimen copy of the policy, certificate of insurance and a copy of the telemarketing confirmation of the insured’s application for coverage is attached as Exhibit “A” to this Complaint.

9.

The policy provided coverage of One Hundred and Fourteen Thousand, Three Hundred and Twenty-Nine Dollars and Five cents (\$114,329.05), an amount equal to the unpaid balance of the insured loan on the date of death, to be paid to the mortgagee, Washington Mutual, as the first policy beneficiary, with any remaining balance to be paid to Denise Talsma as the second policy beneficiary.

10.

Upon information and belief, the insured, Leroy W. Talsma, died on or about January 26, 2002.

11.

American Bankers has received conflicting claims for the policy proceeds. Washington Mutual, as the first policy beneficiary, has asserted its entitlement to the proceeds. Denise Talsma has also made a claim for the proceeds through her

attorney Frederick D. Burkey, asserting that she is the primary beneficiary.

Frederick D. Burkey, and his law firm The Burkey Law Firm, P.C., have also made a claim for all or part of the proceeds. On September 16, 2003, Burkey sent a letter to American Bankers demanding payment of the proceeds, and asserting a "Notice of Attorney's Lien" on the proceeds on behalf of himself and The Burkey Law Firm, P.C. (A copy of the September 16, 2003 letter and Notice of Attorney's Lien is attached hereto as Exhibit "B").

12.

On September 30, 2003, Plaintiff sent a letter to Frederick D. Burkey, and The Burkey Law Firm, P.C., stating that Plaintiff has issued a check for \$114,329.05 to Washington Mutual, Denise Talsma, and The Burkey Law Firm, which represented all benefits due and payable under the policy. Plaintiff also advised Mr. Burkey of the aforesaid competing claims. (A copy of the September 30, 2003 letter is attached hereto as Exhibit "C").

13.

As a result of the aforesaid conflicting claims, Plaintiff is in doubt as to which Defendant is entitled to be paid the policy proceeds, and Plaintiff submits that it may be exposed to double or multiple liability with respect to the policy

proceeds.

WHEREFORE, American Bankers demands:

1. That the Court order WASHINGTON MUTUAL to be made a party-Defendant to respond to this Complaint;
2. That the Court order DENISE TALSMA to be made a party-Defendant to respond to this Complaint;
3. That the Court order FREDERICK D. BURKEY to be made a party-Defendant to respond to this Complaint;
4. That the Court order THE BURKEY LAW FIRM, P.C. to be made a party-Defendant to respond to this Complaint;
5. That the Court order the Defendants to interplead their respective claims;
6. That the Court order that each of the Defendants be restrained from instituting any action against Plaintiff for the recovery of the amount of the policy proceeds or any part thereof, pursuant to 28 U.S.C. § 2361;
7. That the Court adjudge which Defendant(s) are entitled to the policy proceeds;
8. That the Court enter an order permitting American Bankers to deposit the amount of One Hundred and Fourteen Thousand, Three Hundred and

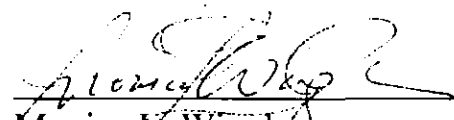
Twenty-Nine Dollars and Five cents (\$114,329.05) into Court pursuant to LR 67.1 and Rule 67 of the Federal Rules of Civil Procedure, and thereupon be discharged from all liability in respect to the aforesaid policy and all matters arising therefrom; and,

9. That the Court award American Bankers its cost and attorneys fees; and

This 29 day of October, 2003.

ALEMBIK, FINE & CALLNER, P.A.

By:



Monica E. Wingler

Ga. State Bar No. 475385

Attorney for American Bankers Life
Assurance Company of Florida

245 Peachtree Center Avenue
Fourth Floor, Marquis One Tower
Atlanta, GA 30303
404-688-8800

EXHIBIT "A"



AMERICAN BANKERS LIFE ASSURANCE COMPANY

OF FLORIDA
11222 Quail Roost Drive, Miami, FL 33157-8596 (305) 253-2244
(Herein called the Company or we)

Certificate Number _____

**CERTIFICATE OF INSURANCE
BENEFITS FOR DEATH CAUSED BY AN ACCIDENT**

CONDITIONS NECESSARY FOR PAYMENT: We will pay a benefit as shown below if:

1. you suffer an injury;
2. loss covered by this certificate results from this injury;
3. this loss occurs within 90 days of the injury; and
4. your certificate is in effect on the date of the injury.

ACCIDENTAL DEATH BENEFIT: We will pay a benefit for loss of life due to injury. The benefit payable will be the unpaid amount of the insured loan on the date you die.

The proceeds determined above will be reduced if the loan amount at application was more than (\$200,000). In this case, the proceeds determined above will be multiplied by the ratio of the amount of insurance over the loan amount at the date of application.

JOINT LIFE INSURANCE BENEFIT: We insure two lives; the insured mortgagor's and the joint insured's. The joint insured must be a cosigner on the debt.

We will pay the proceeds:

1. if either the insured mortgagor or the joint insured dies; and
2. subject to the provisions of the group master policy.

Only one death benefit will be paid. The death of either insured will terminate the insurance on the other. If they die simultaneously, the benefit will be paid for the first insured mortgagor.

PAYMENT OF BENEFITS: We will pay benefits subject to all policy provisions and conditions; we will pay only upon receipt of proof of loss. Proof of loss is defined below. We will pay the benefit to the mortgagee to reduce or extinguish the insured loan. If the benefit amount exceeds the unpaid amount of the insured loan, the excess will be paid to:

1. you, if living; or
2. the second beneficiary named by you or to your estate.

DEFINITIONS: This is what we mean when we use these words or phrases:

"We," "us," and "our" refer to American Bankers Life Assurance Company of Florida.

"You" and "your" are used in the certificate to refer to the first insured and the co-insured.

"The insured" means:

1. for single life - the insured mortgagor; or
2. for joint life - the insured mortgagor and the joint insured.

**ACCIDENT ONLY MORTGAGE INSURANCE CERTIFICATE
SINGLE OR JOINT ACCIDENTAL LIFE INSURANCE
BENEFIT PAYABLE FOR DEATH
DUE TO ACCIDENTS OCCURRING AFTER EFFECTIVE DATE
NONCONVERTIBLE - NONPARTICIPATING**

The "beneficiary" is the person to whom we may pay benefits due at your death. The first beneficiary is the mortgagee named above; you may name a second beneficiary in the application.

"Injury" means bodily injury caused by an accident which occurs while the insurance coverage is in force.

"Loss" means your death. Loss must:

1. be caused by an injury not excluded under this certificate; and
2. occur within 90 days of the injury.

"Physician" means a licensed physician other than you. Such physician must be licensed in either the USA, Puerto Rico, Canada, or Mexico.

"Benefit" means the amount of insurance we will pay.

"The certificate date" will be the effective date shown on your application.

"The effective date" is the date your insurance starts.

"Proof of loss" means written proof of loss acceptable to us.

"Loan or loans" mean(s) the indebtedness of a mortgagor or mortgagors to the mortgagee.

"Mortgagee" means a Financial Institution.

"Mortgagor" means an insured indebted to the mortgagee.

GENERAL PROVISIONS

Consideration: This certificate is issued on the basis of the application and the payment of the first premium. This certificate is subject to the provisions of the policy.

Eligibility - age limits: To be eligible for this insurance, on the effective date you must

1. be indebted to a mortgagee;
2. be at least 18 years of age; and
3. not be over 65 years of age.

Termination: The insurance provided by this certificate will terminate when:

1. the group policy terminates if the mortgagee does not continue to pay your monthly premiums;
2. your loan matures;
3. you do not pay a monthly premium within the grace period;
4. your loan is discharged before the maturity date by:
 - a. payment in full,
 - b. renewal,
 - c. refinancing, or
 - d. repossession;
5. the last day of the month following your 70th birthday.

Our liability to you ceases on the date the insurance is terminated except for claims incurred prior to the end of the grace period.

Exclusions: This insurance does not cover any loss caused in whole or in part, directly or indirectly, from:

1. suicide or attempted suicide, while sane or insane;
2. intentionally self-inflicted injury;
3. any act of war, declared or undeclared;

4. losses from an accident occurring outside the limits of the USA, Canada or Mexico or their possessions and territories;
5. taking part in or trying to commit a felony.

Entire contract The entire contract consists of:

1. the policy;
2. your application; and
3. the mortgagee's application.

All statements made by the insured in the absence of fraud are deemed to be representations - not warranties.

Modification of contract No agent can change the policy or waive any of its provisions. Changes can be made only by written endorsement signed by our president or secretary.

Time limit on certain defenses After 2 years from the certificate date, we will not

1. void the certificate or deny a claim based on statements made in the application, except for fraudulent statements.
2. reduce or deny any claim beginning after such time because of a disease or physical condition existing prior to the certificate date.

Misstatement of age If your age has been misstated, we will pay the amount of insurance the premium paid would have bought on the certificate date at the true age. If we would not have issued this certificate at your true age, we are liable only to refund all premiums paid.

Conformity with state statutes If any of these provisions is, on the effective date, in conflict with the statutes of the state where you reside, that provision is amended to conform to the minimum requirements of such statutes.

Renewal Premiums Renewal premiums are due monthly. Each premium keeps the certificate in force for one month. The amount of each premium is shown in your application.

Grace Period You will be allowed a grace period of 31 days to pay any monthly premiums except the first. If a monthly premium is not paid within the grace period, all insurance on your life will terminate at the end of the grace period.

Notice of Claim Written notice of claim must be given to us within 60 days after the beginning of any loss covered by this certificate, or as soon thereafter as reasonably possible. Notice may be given to us at our home office or through one of our authorized agents.

Claim forms When we receive a notice of claim, within 10 working days we will furnish the claimant with our usual forms for filing proof of loss. If we do not do so, the claimant can comply with the requirements for filing proof by submitting written proof within the term fixed in the proof of loss provision. Such proof must cover the occurrence, the character and the extent of loss.

Proof of loss Written proof of loss must be furnished to us at our home office; it should be furnished within 90 days after the end of the period for which we are liable. In case of claim for any other loss, such proof must be provided within 90 days after the date of loss. Failure to furnish such proof within these times will not invalidate or reduce a claim if proof is furnished as soon as reasonably possible. Except in the absence of legal capacity, however, we are not required to accept proof more than one year from the time the proof is otherwise required.

Time of payment of claims We will pay

1. benefits for any loss; and
2. as soon as we receive due written proof of such loss.

If we do not pay the benefits due under this policy at that time, we will have 15 working days after that to mail you a:

1. letter; or
2. notice.

The letter or notice will:

1. state the reasons we may have for not paying all or part of the claim; and
2. give you a written list of any documents or other information needed to process:
 - a. the unpaid claim; or
 - b. any unpaid portion of the claim.

Within 15 working days after we receive all of the needed listed documents or other information, we will:

1. process the claim; and
2. either:
 - a. pay all or part of it; or
 - b. deny all or part of it.

We will give you the reasons we may have for denying:

1. such a claim; or
2. any part of it.

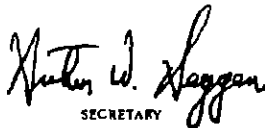
If we fail to comply with this time of payment of claims provision, we will pay you interest on the benefits due under this policy; the interest will be equal to 18% per annum.

Payment of claims: We will pay benefits to the mortgagee beneficiary to reduce or extinguish the insured loan. If the benefit exceeds the unpaid amount of the insured loan, the excess will be paid as follows:

1. Death benefits will be paid to the second beneficiary named by you, if any, or to your estate.
2. Other benefits will be paid to you.

Physical examination and autopsy: We will have the right and opportunity, at our own expense, to examine you when and as often as we may reasonably require while a claim is pending or being paid. We also have the right to make an autopsy in case of death where it is not forbidden by law.

Legal actions: No action at law or in equity shall be brought to recover on this certificate before 60 days after the required written proof of loss has been furnished. No such action shall be brought more than 6 years after the time written proof of loss is required to be furnished.


SECRETARY


PRESIDENT



AMERICAN BANKERS LIFE ASSURANCE COMPANY OF FLORIDA
11222 Quail Roost Drive, Miami, FL 33157-8598 (305) 253-2244

PRIVACY ACT NOTICE

(Applicable to Residents of All States Except Illinois and Texas)

In connection with processing your application for Insurance, the Company may obtain personal information about you from others. Such information as well as other personal or privileged information given on your application or subsequently collected by us or our agent may in certain circumstances be disclosed to third parties without your authorization. This Notice is to inform you of this and advise you that you have a right of access and correction with respect to all personal information collected. Upon your request, we will supply you with a Notice of Insurance Information Practices. This Notice provides a more complete description of our information practices and of your right under the Privacy Protection Act.

6 / 21 / 2003

PRIVACY ACT NOTICE

(Applicable to Residents of Illinois only)

In connection with processing your application for Insurance, the Company may obtain personal information about you from others. Such information as well as other personal or privileged information given on your application or subsequently collected by us or our agent may in certain circumstances be disclosed to third parties without your authorization. This Notice is to inform you of this and advise you that you have a right of access and correction with respect to all personal information collected. Upon your request, we will supply you with a Notice of Insurance Information Practices. This Notice provides a more complete description of our information practices and of your right under the Privacy Protection Act.

Any complaints regarding any aspect of this insurance may be addressed to either or both the following:

Consumer Services Division, Complaint Section
American Bankers Life Assurance Company of Florida
11222 Quail Roost Drive, Miami, Florida 33157

Public Service Division
Illinois Insurance Department
320 West Washington Street
Springfield, Illinois 62767

DOCUMENT NUMBER: 000000

**FOR INFORMATION, OR
TO MAKE A COMPLAINT CALL:
1-800-852-2244**

N1411-0696

N1411-0736

9 * 233
996268N6
1M-3993-0001
GROUP

ACCIDENTAL DEATH AND DISABILITY

CERTIFICATE #: 5301725650 0
ACCOUNT : CITIMORTGAGE INC
BENEFICIARY:
WASHINGTON MUTUAL INS SVC

EFFECTIVE DATE: 09/01/98
MONTHLY PREMIUM: \$24.99
BENEFIT AMOUNT: \$119,000.00
COVERAGE TYPE: SINGLE

LEROY W TALSMAN
8390 EMERALD POINTE LN
GAINESVILLE GA 30506-6750

CERTIFICATE OF INSURANCE SCHEDULE OF COVERAGE

Attached is your personal Policy/Certificate of Insurance, detailing the terms of your coverage. This valuable document should be kept in a safe place.

The effective date, monthly premium and amount of your coverage are shown in the Schedule section. Further information about general terms of your coverage is shown in the text of the attached Policy/Certificate of Insurance.

During our years of service, American Bankers has been proud to be the leader in providing the finest services in credit and noncredit-related products. American Bankers' leadership position is a reflection of its service and its appreciation of customers and clients.

However, our customers are our greatest asset . . .

AMERICAN BANKERS LIFE ASSURANCE COMPANY OF FLORIDA

11222 Quail Roost Drive, P.O. Box 979056, Miami, FL 33197-9056 (305) 253-2244
Attention: Direct Response/Customer Service

DM SCHINS3.mpl

TELEMARKETING SALES FOR
SOURCE ONE MORTGAGE ACCIPLUS W/O \$5,000

ACCOUNT NUMBER : 0000000505206943
MONTHLY PREMIUM : 24.99
BENEFIT AMOUNT : 119,000.00
1st APPLICANT DOB : 03/01/57
APPLICANT NAME : LEROY W TALSMAN
ADDRESS : 8390 EMBANK POINTE LANE
CITY : GAINESVILLE
STATE : GA
ZIP : 305060000
COVERAGE TYPE : S
1st APPLICANT SEX : M
PHONE NUMBER : 770-844-7380
2nd APPLICANT DOB :
2nd APPLICANT NAME :
BENEFICIARY : SOURCE ONE MORTGAGE CORP.
TRACKING CODE : 1M3993-0001-233-G-9-O-996268N6
SPOKE TO : DENISE TALSMAN
TSR# : 217-3392
DATE/TIME OF SALE : 08/05/99 08:23:11

4/11/02

041102080808

6/22/02

080808080808

EFFECTIVE SEP 1 1999

PAT

EXHIBIT “B”

NOTICE OF ATTORNEY'S LIEN

*Via Facsimile, 305-506-0023, and U.S. Mail, Return Receipt
Requested No. 7099 3400 0009 6840 2625*

Assurant Group
American Bankers Life Assurance Company of Florida
Attn: Ms. Ana Sanderlin
Financial Claims Department, 4th Floor
11222 Quail Roost Drive
Miami, FL 33197

*Via U.S. Mail, Return Receipt
Requested No. 7099 3400 0009 6840 2618*

Washington Mutual Home Loans
Attn: Payoff Unit
11200 W. Parkland Ave
MWI0303
Milwaukee, WI 53224

Re: Policy of Mortgage Insurance
Insurer: Assurant Group/American Bankers Life Assurance Company of Florida
Insured: Mr. Leroy W. Talsma and Ms. Denise Talsma as beneficiary
Claim No.: 00181813
Policy No.: 5206943
Date of Loss: 01/26/2002
Benefit Due: \$114,329.03.00

Pursuant to Official Code of Georgia Section 15-19-14, you are hereby notified that the undersigned, Frederick D. Burkey, an attorney at law, and The Burkey Law Firm, P.C., hereby assert a lien upon all actions, judgments, and decrees for money which may be rendered in the above styled claim and, specifically upon all money due from Assurant Group/American Bankers Life Assurance Company of Florida in the amount of \$114,329.03, representing the payoff of the Mortgage Loan issued to Leroy Talsma by Washington Mutual Home Loans. The aforementioned sum is due and owing to the Claimant/Insured, Ms. Denise Talsma, as the beneficiary on behalf of Leroy W. Talsma. The aforementioned lien shall be on all money due for legal services rendered to the insured in connection with the subject matter of the above styled claim.

You are hereby notified that the undersigned attorney shall have a lien superior to all liens except tax liens; and that no person shall be at liberty to satisfy such an action, judgment, or decree until the lien or claim of the attorney for attorney's fees is fully satisfied. Be further advised that any property recovered shall remain subject to the aforementioned attorney's liens unless transferred to bona fide purchasers without notice.

Signature on Following Page

Notice of Lien
Assurant Group
September 16, 2003
Page 2 of 2

This 16 day of September, 2003.

THE BURKEY LAW FIRM, P.C.

Frederick D. Burkey
Georgia Bar No. 095737

Attorney for the Claimant/Insured

The Offices at Crabapple Village
1802 Abbey Court
Alpharetta, Georgia 30004
770-587-5529

Sworn to and subscribed before
me this 16 day of
September, 2003

NOTARY PUBLIC, STATE OF GEORGIA

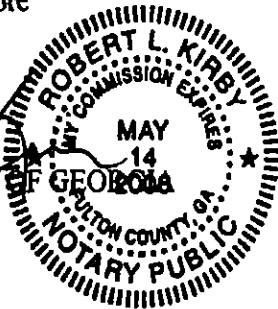


EXHIBIT “C”

**American Bankers Life Assurance
Company of Florida**

11222 Quail Roost Drive, Miami, FL 33157-8596, 1.800.327.5288

THE BURKEY LAW FIRM
THE OFFICES OF CRABAPPLE VILLAGE
1802 ABBEY COURT
ALPHARETTA, GA 30004
|||

100-26937

Sincerely,
Financial Claims Department

CC:
WASHINGTON MUTUAL
2210 ENTERPRISE DRIVE
ATTN: OPTIONAL INS DEPT
FLORENCE, SC 29501
|||